

General Information Letter: Corporation whose tax year and filing status is otherwise unchanged by acquisition may file a single return covering both short taxable years resulting from the acquisition.

March 23, 2001

Dear:

This is in response to your letter dated March 15, 2001, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us.

In your letter you have stated the following:

It is my understanding that xxxxxxxxxxxxxx, a consultant to xxxxxxxxxxxxxxxxxxxxxx recently had a preliminary conversation with you, on our behalf, requesting administrative relief in light of the Company's merger/acquisition. Specifically, we are requesting permission to file a full year, Illinois combined income tax return for tax year 2001, even though the xxxxxxxxxxxxxxxxxxxxxx is required to file a short period consolidated return for federal income tax purposes. The following information summarizes the xxx xxxxxxxxxxxxxx transaction, and describes our reasons for making this request.

The xxxxxxxxxxxxxxxxxxxxxx merger transaction constituted an exchange to which Section 351 of the Internal Revenue Code applies or a reorganization within the meaning of Section 368(a) of the Internal Revenue Code, or both. xxxxxxxxxxxxxxxxxxxxxx ("xxxxxx") was a new corporation formed in contemplation of the merger, which through a series of steps taken on or about January 11, 2001, became the parent of xxxxxxxxxxxxxxxxxxxxxx ("xx") and xxxxxxxxxxxxxxxxxxxxxx ("xxx"), thus each became a wholly owned subsidiary. xx and its corporate subsidiaries are deemed to have joined a new consolidated group for federal income tax purposes, and thus the xx consolidated group is required to file a short period tax return from January 1 to January 11, 2001, since xxx is deemed the survivor of the transaction.

The consolidated federal income tax return for the xxxxxxxx consists of over 500 corporate entities, which in turn, hold a complex mix of interests in hundreds of partnerships. The preparation of the federal income tax return is highly complex, and is a very labor intensive effort, involving tax professionals (working for xxxxxx or its affiliates as well as xxxxxxxxxxxxxxxxxxxxxx personnel) in six different locations across the country. The requirement to file thousands of additional separate and combined state and local tax returns for this eleven day period is an extreme administrative burden on the companies resources, as well as that of our outside accounting firm, xxxxxxx xxxxx.

For regulatory purposes, the company was not required to close its books on January 11, 2001. The calculation of federal taxable income/loss for the eleven-day federal income tax return will be based upon a pro-rated amount using general ledger information, available as of January 31, 2001. This is an acceptable method to

determine the book income for federal income tax purposes. It is expected, although not certain at this time, that the eleven day period will produce a consolidated taxable loss for federal income tax purposes.

As a practical matter, apportionment data for the eleven-day period will not be available. Attempting to gather such information, which would be an approximation at best, would be a burdensome exercise with little practical value. Again, given the number of corporations in the consolidation and the partnership flowthrough information (for partnerships which are not required to respect the same short period), this is an enormous exercise. Since it is our understanding that there were no significant extraordinary transactions (e.g., a major sale or purchase of assets, the acquisition or sale of a subsidiary, or a significant gain or loss) during the first 11 days of the year, we would not anticipate the apportionment ratios would differ significantly for the full year. Providing full year income and apportionment data is more fairly reflective of the Company's activity in the State and will result in the appropriate amount of tax due.

Due to the extreme administrative burden, the absence of meaningful tax information, and the likelihood of a consolidated loss for federal income tax purposes for the eleven day period, we respectfully request permission to file a single tax return for the full year 2001, including the eleven day period. Granting this request will relieve us of an enormous strain on existing resources. Further, we believe that a full year 2001 return will not result in a distortion of the income attributable to the State of Illinois.

In a telephone conversation on March 8, 2001, xxxxxxxxxxxxxx informed me that xxxxxxxxxxxxxxxxxxxxxx does not expect xxxxxxxxxxxxxxxxxxxxxx and its subsidiaries to be engaged in a unitary business with xxxxxxxxxxxxxxxxxxxxxx and its subsidiaries. The unitary business group comprised of xxxxxxxxxxxxxx and its unitary subsidiaries is expected to continue in existence, separate from the unitary business group of xxxxxxxxxxxxxxxxxxxxxx and its subsidiaries.

Response

Section 401(a) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 *et seq.*) provides:

For purposes of the tax imposed by this Act, the taxable year of a person shall be the same as the taxable year of such person for federal income tax purposes.

Section 401(b) of the IITA provides that, if any taxpayer has its federal taxable year changed, its taxable year for Illinois income tax purposes is also changed.

Treasury Regulation Section 1.1502-76(b)(1)(ii) provides that:

If a corporation (S), other than one described in paragraph (b)(1)(ii)(A)(2) of this section, becomes or ceases to be a member during a consolidated return year, it becomes or ceases to be a member at the end of the day on which its status as a

member changes, and its tax year ends for all Federal income tax purposes at the end of that day.

Pursuant to this provision, the taxable year of xxxxxxxxxxxxxxxx and its subsidiaries beginning January 1, 2001, was terminated on January 11, 2001. The tax items of xxxxxxxxxxxxxxxx and its subsidiaries for the short tax year beginning January 12, 2001 and ending December 31, 2001 are required to be included in the consolidated return of xxxxxxxxxxxxxxxx for the consolidated group's taxable year ending December 31, 2001. Pursuant to Section 401(b) of the Illinois Income Tax Act, calendar year 2001 is therefore divided into two short taxable years for Illinois income tax purposes as well, with one ending January 11, 2001 and the other ending December 31, 2001.

Nevertheless, in situations essentially identical to the current situation, where a corporate taxpayer is required by the federal consolidated return regulations to divide its otherwise-unchanged taxable year into two short taxable years because it is acquired by another corporation, and the taxpayer is not being added to the unitary business group of the acquiring corporation, the Department has ruled that the corporation may file a single Illinois income tax return for the entire 12-month taxable year rather than for the two short taxable years. See IT 87-0003 (January 5, 1987); IT 87-0025 (February 13, 1987); IT 87-0276 (November 5, 1987); and IT 88-213 (July 22, 1987).

Pursuant to those letter rulings, xxxxxxxxxxxxxxxx and its unitary business group may file a single Illinois income tax return for calendar year 2001, and include in that return the tax items of its members for their taxable years ending January 1, 2001, and December 31, 2001.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel -- Income Tax